U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOBART J. SPICER, JR. and DEPARTMENT OF THE AIR FORCE, McCLELLAN AIR FORCE BASE, Sacramento, Calif.

Docket No. 96-627; Submitted on the Record;
Issued March 26, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation on the grounds that he had no continuing disability from the accepted back strain.

The Board has duly reviewed the case record and finds that the Office met its burden of proof in establishing that appellant had no continuing disability stemming from the accepted back injury sustained on May 16, 1986 and therefore properly terminated compensation.

Under the Federal Employees' Compensation Act,[1] the Office has the burden of justifying modification or termination of compensation once a claim is accepted and compensation paid.[2] Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.[3]

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.[4] The Office's burden

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[1] 5 U.S.C § 8101 *et seq.* (1974).

[2] *William Kandel,* 43 ECAB 1011, 1020 (1992).

[3] *Carl D. Johnson,* 46 ECAB 804, 809 (1995).

[4] *Dawn Sweazey,* 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for, and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[6]

In this case, appellant, then a 56-year-old machinist, filed a notice of traumatic injury on June 2, 1986, claiming that he injured his back on May 16, 1986 when he was knocked off a stool by another employee during an altercation. The Office accepted a low back strain and paid appropriate compensation.

Appellant returned to light duty for four hours a day on December 11, 1989. On January 13, 1990 appellant filed a notice of recurrence of disability, claiming that he sustained increased back pain and numbness in his feet while pulling open supply drawers. Appellant stopped work on December 14, 1989 and did not return.[7]

On October 26, 1994 the Office referred appellant, along with a statement of accepted facts, the medical records, and a list of questions to Dr. John L. Branscum, a Board-certified orthopedic surgeon, for a second opinion evaluation. Based on Dr. Branscum's December 14, 1994 and August 29, 1995 reports, the Office issued a notice of proposed termination on October 10, 1995, informing appellant that he had 30 days to submit evidence showing that he was still disabled from the 1986 work injury.

On November 13, 1995 the Office terminated appellant's compensation, effective December 10, 1995, on the grounds that his disability resulting from the May 16, 1986 work injury had ceased. The Office noted that appellant had not submitted any medical evidence in response to the October 10, 1995 notice.

Appellant timely requested reconsideration on the grounds that he had submitted a medical report from Dr. Fred A. Norman, his treating physician who is Board-certified in family practice, and that Dr. Branscum's report showed that appellant's previous injuries, which involved his back, were work related. On December 1, 1995 the Office denied appellant's request on the grounds that the evidence was insufficient to warrant review of its prior decision.

The Board finds that Dr. Branscum's reports are sufficient to meet the Office's burden of proof in terminating appellant's disability compensation. Dr. Branscum reviewed the medical

[5] *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

[6] *Connie Johns*, 44 ECAB 560, 570 (1993).

[7] On May 6, 1993 appellant was separated from the employing establishment.

treatment records, including the report of Dr. Clarence A. Luckey, a Board-certified orthopedic surgeon who evaluated appellant on January 4, 1989 and stated that appellant "was not nearly as disabled as he alleged," and lacked motivation to recover from his injury. Dr. Branscum also reviewed the history of appellant's two previous work injuries involving his back,[8] and the conclusion of Dr. Norman, who continued appellant on disability because of his chronic back pain and limited range of motion.

Upon physical examination, Dr. Branscum found normal range of motion of appellant's cervical spine with some decrease in extension, flexion, and rotation of the lumbar spine. He noted "deep, mature calluses" in both of appellant's hands and negative straight leg raising. Dr. Branscum diagnosed a bulging disc at L5-S1, as shown by a magnetic resonance imaging (MRI) scan and x-ray.

Dr. Branscum related that, based on appellant's history of his injury, he "sustained an acute contusion to his lumbar spine that lasted not more than six months." The physician stated that his examination revealed no findings indicating that appellant's fall from a stool in May 1986 was in any way associated with his current condition, which was more likely due to the natural progression of preexisting degenerative disc disease. Dr. Branscum concluded that the May 16, 1986 fall had no significant prolonged effect on appellant's back condition,[9] and added that appellant was capable of working eight hours a day with restrictions of no heavy lifting and no repetitive bending or stooping from the waist.

By contrast, Dr. Norman's November 6, 1995 report provided no diagnosis, no conclusion regarding the cause of appellant's back pain, and no assessment of appellant's ability to work; the form merely stated that appellant complained of daily constant back pain which limited his range of motion.[10]

Dr. Branscum reviewed the medical records and a statement of accepted facts, examined appellant thoroughly, and found no objective evidence to support appellant's complaints of pain.[11] He provided a detailed and well-rationalized medical explanation of why the accepted condition had resolved and appellant had no continuing disability from the back strain he sustained on May 16, 1986.[12] Thus, the Board finds that Dr. Branscum's conclusion represents

[8] Appellant was struck by an automobile on January 21, 1967, sustaining a chest contusion and a compression fracture at D-7, and hurt his back in an altercation with another employee on November 12, 1971. Both incidents were work related.

[9] In his August 29, 1995 report, Dr. Branscum reiterated this conclusion after reviewing the medical records of appellant's 1967 and 1971 injuries.

[10] Dr. Norman's next most recent report was dated May 28, 1991 and stated that while appellant's 1990 MRI scan was normal, his pain could be caused by ligamentous sprain and instability, which would not show up on an MRI scan.

[11] *See Anna Chrun*, 33 ECAB 829, 835 (1982) (finding that the absence of objective evidence of disability is more compatible with the absence of disability than with its presence).

[12] *See Delphine L. Scott*, 41 ECAB 799, 802 (1990) (finding that the second opinion physician's conclusion regarding the improbability of appellant's lumbosacral sprain persisting for so long was sufficient to establish that appellant had recovered from the accepted injury).

the weight of the medical evidence and is sufficient to carry the Office's burden of proof.[13] Therefore, the Board finds that the Office properly terminated appellant's compensation.[14]

The December 1 and November 13, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
March 26, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[13] *See Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that a physician's opinion was thorough, well rationalized, and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).

[14] *See Larry Warner*, 43 ECAB 1027, 1033 (1992) (finding that the well-rationalized report of the second opinion specialist was sufficient to carry the Office's burden of proof that appellant had no residuals of his work-related carpal tunnel syndrome injury).